been using different forms of the Hokkien dialect. Although an attempt was made by the defence to support this by calling a court interpreter as a witness the point was clearly without substance particularly as the appellant himself admitted he spoke the same sub-dialect.

The appellant himself gave evidence at this stage. His story was that after his arrest he was taken "to a certain place in a dark chamber". There a military officer and three other persons punched him and kicked him and asked him whether he was a paratrooper, which he denied. They then compelled him to make a statement. Then he was taken to the police station where he was questioned by the witness, Inspector Hamid. Later he was assaulted again and that night he only had two cups of Ovaltine as food.

The following day about noon he was taken into the jungle in a jeep by the three men who had beaten him the previous day to look for his gun and he was told that if he did not find it he would be beaten again on their return to the police station and that if he was not co-operative he would be killed and they would say he had been shot trying to escape. In the jungle they left the jeep and proceeded on foot but firing broke out and they hid in a bush. They then returned to the jeep to return to Labis and on the way a dead body was found and taken into the jeep. They got back to Labis as it became dark and the appellant was asked to identify the body of a dead woman and he was told that if he did not co-operate he would be like the dead body. It was shortly after that that he was interviewed by Superintendent Yeoh and made his statement. He had had no food and was frightened by reason of his previous experiences. He was not cautioned and he did not understand the interpreter very well. All he was told was that it would be better for him to speak. Subsequently he made no complaint of ill-treatment to anybody.

It is not really necessary for this court to examine that body of evidence because of the way in which it was regarded by the trial judge.

As regards the interview between Superintendent Yeoh and the appellant the judge accepted the evidence of Yeoh and his interpreter and rejected that of the appellant. That depended largely on the view the judge took of the credibility of the witnesses and we accept it without question. With regard to the events alleged by the appellant on 2nd September and on 3rd September prior to the statement being taken the judge took the view that much of the appellant's story was a fabrication. He thought, however, that some inducement might have been held out to the appellant to persuade him to show where his gun was hidden, though not to persuade him to make a statement. And he thought that if there had been any threat or inducement held out to the appellant the effect of it had been removed by the caution administered by Superintendent Yeoh.

With respect we are unable to agree. We are prepared to accept that much of the appellant's evidence was exaggerated and a fabrication. Nevertheless if it contained any elements of truth, and the judge clearly thought it did, something should have been said in addition to the statutory statement to remove any impression that might have been made on the mind of the appellant by whatever had happened previously. It may well be, of course, that Superintendent Yeoh had no knowledge of anything that might have happened previously but that is beside the point. And in any case, though it is easy to be wise after the event, it might have occurred to him that twenty-four hours had elapsed since the arrest of the appellant, that active operations were still going on in the neighbourhood and that in the circumstances it would have been wise to make enquiries with a view to ascertaining whether any additional caution was desirable.

In the circumstances, then, we must hold that the statement was wrongly admitted and to that extent the appeal succeeds. In our view, however, the case clearly falls within the proviso to section 60(1) of the Judicature Act because no reasonable judge could have failed to convict the appellant on the rest of the evidence and so there was no miscarriage of justice (see *Stirland* [5]). And we are fortified in this view by a perusal of the grounds of judgment of Azmi J. From these it is clear that he based the convictions solely on the evidence of the Indonesian witnesses, which he believed, and that he only considered the appellant's statement with a view to ascertaining whether it supported a possible defence based on a portion of it which had been urged upon him.

The appeals are dismissed.

Appeals dismissed.

HOCK HIN CHAN v. NG KEE WOO

[F.C. (Thomson L.P., Ong Hock Thye F.J. and MacIntyre J.) December 28, 1965]

[Ipoh — Federal Court Civil Appeal No. 50 of 1965]

Bills of Sale — Prescribed form — Whether bill of sale can be made by partner on behalf of himself and his partners — Bills of Sale Ordinance, 1950, s. 6(b).

This was an appeal against the decision of the High Court that a bill of sale executed by a judgment debtor in favour of the respondent was valid and that the claim of the appellant, an execution creditor, to the lorry which was the subject matter of the said bill of sale, failed. It was contended that the bill of sale was void as it was not in the form prescribed in the Bills of Sale Ordinance. The bill of sale was stated to be made by a firm and it was argued that a bill of sale cannot be made by partners or by one of the partners.

Held: a partner in a firm can alone grant a bill of sale for himself and on behalf of all his partners and therefore the bill of sale in this case was valid.

Cases referred to:—

(1) *Saunders* v. *White* [1902] 1 K.B. 472, 479.

(2) *Furnivall* v. *Hudson* [1893] 1 Ch. 335.

(3) *Arnashellum* v. *Tengachee Nachiar* (1906), 10 S.S.L.R. 85.

(4) *Charlesworth* v. *Mills* [1892] A.C. 231, 235.

FEDERAL COURT.

Lim Kean Chye for the appellant.

N. Sharma for the respondent.

Cur. Adv. Vult.

Ong Hock Thye F.J.: In an interpleader it was held by the High Court in Ipoh that a bill of sale executed by a judgment-debtor in favour of the respondent abovenamed was valid and that the claim of the appellant, an execution creditor, to the lorry which was the subject-matter of the said bill of sale, failed. This is an appeal against such decision.

The appellant's contention is that the bill of sale was void for non-compliance with the provisions of section 6(b) of the Bills of Sale Ordinance, 1950, that is to say, it was not made in the form in the First Schedule to the Ordinance in that (i) the insertion of "Wan Lee Chan (a firm)" in place of the symbol "A.B." in the prescribed form was fatal to the bill of sale; (ii) the signature of one partner was invalid to a bill of sale purporting to have been made by his firm, and (iii) that the party executing the bill of sale, not being the same person described as the party of the first part, such bill of sale was void.

The form prescribed in the First Schedule — to quote only the relevant portion — reads as follows:

BILL OF SALE

These Presents made the....day of....., 19...., between A.B. of.....of the one part and C.D. of..... of the other part, witnesseth.....etc.

The bill of sale in the instant case was literally in the prescribed form except that, in lieu of "A.B.", was substituted "Wan Lee Chan (a firm)" in the first place and "Wan Lee Chan" thereafter wherever "A.B." occurs in the form and finally, the attestation clause was in the following terms:

"Signed and sealed by Ng Teng Tuan partner of Wan Lee Chan for and on behalf of the said Wan Lee Chan in the presence of.....etc."

It is not seriously disputed by the appellant that the firm of Wan Lee Chan, by its partner, had been given the loan by the respondent and that the bill of sale was made in good faith. This appeal, therefore, is based on purely technical grounds. It is argued that a firm, as such, is not a legal person and, accordingly, a bill of sale given by a firm must be signed by both or all the partners, as the case may be; that an agent cannot execute a bill of sale and that, in any event, there is authority that partners cannot execute any bill of sale: vide *Saunders* v. *White*.[1]

With respect, I do not agree with counsel for the appellant that *Saunders* v. *White* is any authority for his contention. There it was held that a bill of sale given by two grantors, husband and wife, who were not jointly interested in any of the goods comprised therein, but each of whom was the sole owner of a portion of the goods, was void as not being in accordance with the form in the Schedule to the Bills of Sale (Amendment) Act, 1882. In the Divisional Court Lord Alverstone C.J. declined to express any opinion as to what might be the effect of a bill of sale given by partners, although in his view it was clear that a bill of sale could not be given jointly by two independent persons. Affirming the decision of the Divisional Court, Collins M.R., in the Court of Appeal, said:

"In this case the document can be construed in accordance with the facts only by reading the joint words of grant as superfluous and confining the effect of the grant to two separate grants by the husband of his chattels and by the wife of hers. I do not think it would be possible to claim protection for a transaction incapable of being described according to the facts in the statutory form by misdescribing it in the form so as to bring it apparently within the schedule."

The Master of the Rolls then went on:

"I think it is clear on the face of the schedule that only one grant is contemplated, though it may be, but it is not necessary to decide it, that the grant might be made by two or more joint owners."

The ratio of that decision is thus stated in *3 Halsbury*, p. 290: "A bill of sale cannot be made by two grantors, not being partners or joint owners, each owning some of the chattels assigned."

All partners being joint owners of partnership property, I think the only question that calls for determination in this case is the simple one whether a partner may alone grant a bill of sale for himself and on behalf of all his other partners. In my view the answer clearly is in the affirmative. "A member of an ordinary partnership fills a double character; he is both a principal and an agent. As a principal he is bound by what he does himself and by what his co-partners do on behalf of the firm, provided they keep within the limits of their authority; as an agent he binds them by what he does for the firm, provided he keeps within the limits of his authority": see *Lindley on Partnership* (12th Ed.) 128, and section 204 of the Contracts (Malay States) Ordinance, 1950.

What is true of a company having corporate legal personality should be equally applicable to a partnership. The company must execute a bill of sale by an agent. When a partner has the

express authority of his co-partners to grant a bill of sale, I can see no reason for drawing any distinction between a firm and a company. It has been held in *Furnivall* v. *Hudson* [2] that nothing in the English Bills of Sale Acts prohibited the execution of a bill of sale by an attorney under a power. No such prohibition either can be found in our Ordinance to debar an agent from executing a bill of sale.

Neither in *Saunders* v. *White*, nor in any other English case that I know of, has it ever been suggested that a bill of sale can be given by only one grantor. With respect, I do not agree with the contrary view of Thornton J. in *Arnashellum* v. *Tengachee Nachiar* [3] which was cited by learned counsel. Words in the singular include the plural (see section 2(95) of the Interpretation and General Clauses Ordinance, 1948).

To conclude, I think it will not be out of place here to remind ourselves of the true object and intention of the Bills of Sale Ordinance. In *Charlesworth* v. *Mills* [4] Lord Halsbury L.C. observed that the Bills of Sale Acts 1854 and 1878 were intended to prevent false credit being given to people allowed to remain in possession of goods which apparently were theirs, the ownership of which they had surrendered. On the other hand the purpose of the amending Act of 1882 was essentially different. "It was thought by the Legislature, rightly or wrongly, that a great number of impecunious debtors might be induced to sign documents the legal effect of which those persons did not understand. It was therefore intended by the Legislature, in order to protect them, to give a particular form of words which should plainly express the nature of the contract as to the loan and the security for the loan. The Legislature accordingly, in order to effect the object, gave a form of bill of sale, and made every bill of sale void unless it was in accordance with the form given by the statute."

Both absolute bills of sale and those given by way of security are combined and dealt with in our single Ordinance. Hence the observations of Lord Halsbury are equally applicable thereto. Any objection to the validity of any bill of sale must, in my view, be considered in the light of the true facts of each particular case. The test is this: Does it come within the purview of the mischief which the law intended to remedy? There could be no possible doubt or ambiguity on any point whatsoever regarding the transaction in question in this appeal. The attestation clause clearly shows in what capacity Ng Teng Tuan had executed the bill of sale. His authority had never been repudiated by his partner.

I would dismiss the appeal with costs.

Thomson L.P. concurred.

MacIntyre J.: I have had the advantage of reading the judgment of Ong Hock Thye F.J., and I am in complete agreement with it.

I have nothing to add.

Appeal dismissed.

Solicitors: *Lim Cheng Ean & Co.; N. Sharma.*

PUBLIC PROSECUTOR v. LEE SIEW NGOCK

[A.Cr.J. (MacIntyre J.) January 5, 1966]

[Penang — Criminal Appeal No. 15 of 1965]

Criminal Law and Procedure — Trial — Autrefois acquit — Issue estoppel and res judicata — Governing principles — Income Tax Ordinance, 1947, s. 92.

Income Tax — Certificate of disclosure — Falsity of — Awareness.

The accused had been charged with two offences of wilfully and with intent to evade tax giving a false answer in writing to a request for information by the senior investigation officer of the Income Tax Department, or alternatively of giving incorrect information without reasonable excuse. The first charge related to the giving of information on October 1, 1955, and the second to the giving of information on April 14, 1954. It was alleged that the accused had failed to disclose certain assets belonging to him in his statement. The accused was tried on the first charge and acquitted. When he was tried for the second charge he pleaded *autrefois acquit* and he was acquitted. The Public Prosecutor appealed.

Held: (1) as the alleged offences disclosed by the charges related to two independent criminal acts committed on two different dates, the plea of *autrefois acquit* was not available to the accused;

(2) as the accused had been acquitted of the first charge, this amounted to a finding that up to October 1, 1955, he was unaware that any item of assets had been omitted from the statement made by him and that issue must be regarded as determined and settled for all times by the acquittal of the accused;

(3) therefore the prosecution could not re-open the issue by attempting to prove that the accused was aware of the omission of the assets at an earlier period as it would be barred by the principles of issue estoppel as well as *res judicata*.

Application of the principles of issue estoppel to criminal proceedings discussed.

Cases referred to:—

(1) *Connelly* v. *Director of Public Prosecutions* [1964] A.C. 1254, 1305; [1964] 2 W.L.R. 1145; [1964] 2 All E.R. 401; 48 Cr.App.R. 183.

(2) *Sambasivan* v. *Public Prosecutor* [1950] M.L.J. 145.

(3) *Mraz* v. *The Queen* (1956), 96 C.L.R. 62, 70.

(4) *Brown* v. *Robinson* [1960] S.R. (N.S.W.) 297, 301.

(5) *Sealfon* v. *United States* (1948), 332 U.S. 575.

CRIMINAL APPEAL.

Abdul Hamid bin Dato' Azmi (Deputy Public Prosecutor) for the appellant.

Lim Kean Siew (*O. L. Phipps* with him) for the respondent.